

EXHIBIT II

Videotaped Deposition of
Tracy Wolff
March 07, 2023

Freeman

vs.

Deeks

Confidential



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Freeman vs.
Deebs

Tracy Wolff

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 LYNNE FREEMAN,)
3 AN INDIVIDUAL)
PLAINTIFF,)
4)
VS.)
5)
TRACY DEEBS-ELKENANEY)
6 P/K/A TRACY WOLFF, AN)
INDIVIDUAL, EMILY SYLVAN)
7 KIM, AN INDIVIDUAL,)
PROSPECT AGENCY, LLC, A)
8 NEW JERSEY LIMITED) CASE NO. 1:22-CV-02435-LLS
LIABILITY COMPANY,)
9 ENTANGLED PUBLISHING,)
LLC, A DELAWARE LIMITED)
10 LIABILITY COMPANY,)
HOLTZBRINCK PUBLISHERS,)
11 LLC D/B/A MACMILLAN,)
A NEW YORK LIMITED)
12 LIABILITY COMPANY, AND) JOB NO. 10115799
UNIVERSAL CITY STUDIOS,)
13 LLC, A DELAWARE)
LIMITED LIABILITY COMPANY)
14 DEFENDANTS.)

15 *****

16 ORAL AND VIDEOTAPED DEPOSITION OF
TRACY WOLFF
17 MARCH 07, 2023

18 *****

19

20 ORAL AND VIDEOTAPED DEPOSITION of TRACY WOLFF,
produced as a witness at the instance of the Plaintiff,
21 and duly sworn, was taken in the above-styled and
numbered cause on the 7th day of March, 2023, from 8:54
22 a.m. to 4:34 p.m., before Gabriela S. Silva, CSR, RPR in
and for the State of Texas, reported by stenograph, at
23 the Law Offices of Kowert, Hood, Munyon, Rankin &
Goetzel, 1120 S. Capital of Texas Hwy, Building 2,
24 Austin, Texas, pursuant to the Federal Rules of Civil
Procedure and the provisions stated on the record or
25 attached hereto.

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A P P E A R A N C E S

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ALSO PRESENT:

Mr. Walter Bryan, Videographer
Mr. Trent Baer, Plaintiff's Husband
Mr. Lance Koonce (via Zoom)
Mr. Zachary Press (via Zoom)
Mr. Stephen Doniger (via Zoom)
Mrs. Lynne Freeman (via Zoom)

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1 A. I think so.

2 Q. What impact did Tempest Rising series books have
3 on your career?

4 A. Not nearly as much as I would've hoped they
5 would.

6 Q. Well, didn't it really make you a YA writer?

7 A. Insomuch as you define YA writer as somebody who
8 writes YA.

9 Q. Yes.

10 A. Yes, it is my first YA contract.

11 Q. When did you write the first draft of Tempest
12 Rising?

13 A. I wrote the beginnings of Tempest Rising in 2009.

14 Q. And when did you complete the last draft of
15 Tempest Rising?

16 A. The last draft of Tempest Rising was in June
17 2010.

18 Q. How did you choose the Ducati Streetfighter S
19 motorcycle as the motorcycle for the romantic lead in
20 Tempest Rising?

21 A. I Googled it. And there was an article that came
22 up. I believe I Googled something, like, sexiest
23 motorcycle, hottest motorcycle, most expensive
24 motorcycle, probably all of those things. And I
25 remember a specific article came up and there were three

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1 something to that effect. And it just stayed with me
2 and I always thought, that would be a really cool place
3 to set something where paranormals that didn't want to
4 be around humans or, like, giant dragons could fly free.

5 Q. I would like to mark next as Exhibit 48

6 Declaration of Tracy Deebs Elkenaney p/k/a Tracy Wolff.

7 (Exhibit Number 48 was marked.)

8 Q. (By Mr. Passin) First question is, is that your
9 signature on Page 6?

10 A. Yes.

11 Q. Okay. And you recall signing this on or about
12 March 2, 2023?

13 A. I do, yes.

14 Q. Okay. Turn to Paragraph 7. At the end --
15 towards the end of the paragraph, you say, I e-mailed
16 Mrs. Abrams on March 16, 2010 telling her that I thought
17 Tempest Rising was a better title than riptide or
18 Tempest. Do you see that?

19 A. I do.

20 Q. Do you have a copy of that e-mail?

21 A. I saw the e-mail when I wrote this, yes.

22 Q. You saw the e-mail when you wrote it? So did you
23 turn that over to your counsel?

24 A. I told my counsel about it and I know that they
25 had Ben Rose, the e-vendor, come into my computer and

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1 get some e-mails. I do not know which, I just gave him
2 my password and I left it alone.

3 Q. Are you talking about he did that months ago or
4 --

5 A. No, I'm talking about he did that a couple of
6 days ago.

7 Q. Okay. Well, did he also do that months ago or
8 was that the first time that he did it?

9 A. No, Ben Rose did it months ago when we turned
10 overall of my passwords and my phones and my
11 computers -- my computer that had everything backed up
12 on it.

13 Q. And so did Ben Rose retrieve, do you know, a copy
14 of this e-mail?

15 A. I have no idea. All I did was give him my
16 password.

17 MR. GOETZEL: I believe it's been attached
18 as an exhibit to the response.

19 MR. PASSIN: Maybe, I'll have to look.

20 Q. (By Mr. Passin) Then in Paragraph 11, it says,
21 From August 2010 to May 2011, I did not make any changes
22 to that manuscript, that Bloomsbury made one additional
23 change with my permission -- oh, though Bloomsbury made
24 one additional change with my permission.

25 In the first week of November 2010, Bloomsbury

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1 changed the name Kai to Kona throughout the novel.
2 Isn't it true though that if Bloomsbury was able to make
3 that change, you could have also requested a change and
4 Bloomsbury could have made it at that time?

5 MR. GOETZEL: Object to the form of the
6 question. What type of change?

7 A. What type of change are you referring to?

8 Q. (By Mr. Passin) Well, changing the language in
9 the book.

10 A. No. I could not have done that.

11 Q. Why couldn't you have done it if Bloomsbury
12 could've done it?

13 A. Because once a book is formatted and typeset, I
14 believe typeset is the proper term, it is very, very
15 expensive to make changes.

16 Q. But yet they changed Kai to Kona. Right?

17 A. They made that very deliberately for a very
18 deliberate reason.

19 Q. But they chose to pay the money to do that, they
20 could've chose to pay the money for any change.
21 Correct?

22 A. They did that for a very specific reason.

23 Q. But I'm just saying, it's possible they could've
24 changed it if they wanted to?

25 A. No, it's not possible.

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1 Q. You're just saying it's a matter of money, but it
2 can be changed?

3 A. It's not possible for them to make changes like
4 that to my manuscript.

5 Q. Like what?

6 A. Like changing anything, changing language or
7 anything like that.

8 Q. But they -- but they did it. So obviously, it is
9 possible?

10 A. It is not possible for them to do it without my
11 permission, and that is the only one I gave permission
12 for.

13 Q. But you could've given your -- if you gave your
14 permission, they could've made any change?

15 A. They would not have done so.

16 Q. Well, that's speculation. You don't know.

17 MR. GOETZEL: Objection -- objection that's
18 arguing with the witness. Please refrain from doing
19 that.

20 Q. (By Mr. Passin) Paragraph 13?

21 A. I --

22 Q. Go ahead.

23 A. I did not ask them to make any changes besides
24 our discussion via Kai and Kona and if I did, they would
25 not have done so at that late date. And --

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1 Q. Go ahead. I don't mean to interrupt you.

2 A. -- in fact, Kai -- at that point, the ARC had
3 already gone to print because Kai is in the ARC, not
4 Kona. So the language is the same in the ARC and so it
5 was not changed. No changes were requested besides the
6 Kai do to Kona thing.

7 Q. In Paragraph 13, it says Mrs. Abrams e-mailed me
8 on that same day --

9 A. I'm sorry. Could you tell me which paragraph
10 again?

11 Q. Paragraph 13, second sentence. It says, Mrs.
12 Abrams e-mailed me on that same day and said she would
13 send several to me in the mail that day. Did you ever
14 -- do you have a copy of that e-mail in your possession?

15 A. I do have a copy of that e-mail in my possession.
16 That is how I knew to write that there.

17 Q. Okay.

18 A. Because I saw it.

19 Q. And have you turned that over to your counsel?

20 A. I allowed Ben Rose into my computer. I do not
21 know which e-mails he took, but I gave him full access
22 to all of them.

23 MR. GOETZEL: Also attached as an exhibit,
24 just so you know.

25 Q. (By Mr. Passin) It says, I -- the next sentence

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1 in that paragraph says, I am still in possession of this
2 Tempest Rising ARC and will provide it to Plaintiff for
3 inspection at my deposition on Tuesday, March 7 in
4 Austin, Texas. Do you see that?

5 A. Yes, I do.

6 Q. Was a copy of that turned over to your lawyers
7 months ago when they did the production?

8 A. No.

9 Q. Do you know why not?

10 A. Because Tempest Rising was not about Crave.

11 Q. Well, I don't want to get into an argument with
12 you on that. So that's -- I'll talk to the lawyers
13 about that. It was definitely asked for.

14 And then let's look at Paragraph 28. It says,
15 When this case began, I provided my e-mail passwords and
16 phone to --

17 A. I'm sorry. What number is this?

18 Q. 28.

19 A. 28?

20 Q. When this case began, I provided my e-mail
21 passwords and phone to an E-discovery vendor and gave
22 the vendor complete access to my computer. Which
23 computer did you give access to?

24 A. The computer that I had at the time and the
25 OneDrive that had everything that I'd written backed up

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1 in to it.

2 Q. But didn't you have more than one computer?

3 A. I did, but they were not functioning.

4 Q. Which computers were not functioning?

5 A. I actually gave him access to -- I believe I gave
6 him access to two computers, the two that were
7 functioning and I...

8 Q. Which two computers were those?

9 A. I don't know how to identify them besides the
10 computers that I --

11 Q. Well, you have names. We know you had what is
12 it? Three Lenovos and one Mac?

13 A. I gave him access to the Lenovo -- to the
14 functioning Lenovo and I think I gave him access to the
15 Mac.

16 Q. You think, but you're not sure?

17 A. I believe I gave him access to the Mac.

18 Q. Well, then why did you say in your declaration,
19 access to my computer and not computers?

20 A. Because I -- in my head, computer is whatever
21 computer I happen to be working on. I gave the vendor
22 complete access to my OneDrive where everything is
23 backed up and I gave him complete access to --

24 Q. Well, why didn't you mention OneDrive, OneDrive
25 in this paragraph?

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1 MR. GOETZEL: Because it's in Paragraph 29.

2 MR. PASSIN: Fair enough.

3 Q. (By Mr. Passin) Now, OneDrive though, you didn't
4 get OneDrive until when?

5 A. I don't know the exact date, but very early on in
6 -- everything that -- very early on in the pandemic, but
7 every document I had was -- I had on even the computer I
8 was using at that time was backed into the OneDrive.

9 Q. Even the computer you were using at what time?

10 A. When I was writing Crave, which was before the
11 pandemic. Everything was backed up on to the OneDrive.

12 Q. When you originated production in this case, did
13 you give the vendors access to the OneDrive?

14 A. I did, yes.

15 Q. Next I'd like to mark as Exhibit 49 --

16 MRS. COLE: I'm sorry. Before we introduce
17 that exhibit, are any of those -- it looks like they're
18 text messages. Are any of them redacted or --

19 MR. PASSIN: No. Just so you know, yes,
20 there are not any redacted. I purposefully --

21 MRS. COLE: No, that's totally fine. Just
22 wanted to note it for the record.

23 MR. BAER: I think there's Bates numbers at
24 the bottom of each one.

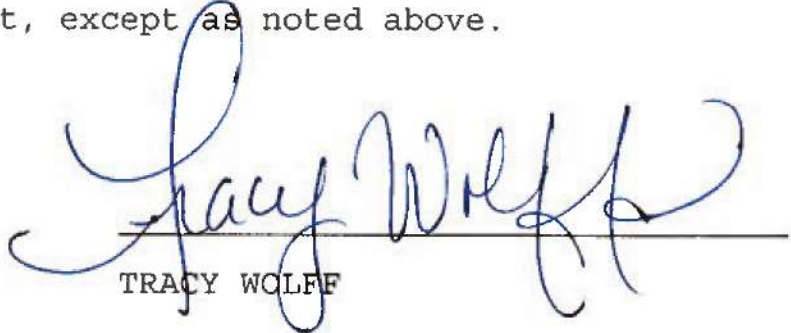
25 MRS. COLE: Great.

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1 I, TRACY WOLFF, have read the foregoing
 2 deposition and hereby affix my signature that same is
 3 true and correct, except as noted above.

4
 5
 6
 7

 TRACY WOLFF

8 THE STATE OF TEXAS)

9 COUNTY OF TRAVIS)

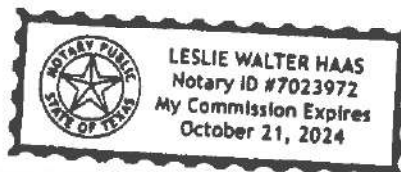
10 Before me, Leslie Walter Haas, on this
 11 day personally appeared TRACY WOLFF, known to me (or
 12 proved to me under oath or through Driver License)
 13 (description of identity card or other document) to be
 14 the person whose name is subscribed to the foregoing
 15 instrument and acknowledged to me that they executed the
 16 same for the purposes and consideration therein
 17 expressed.

18 Given under my hand and seal of office this
 19 23rd day of March, 2023.

20
 21


22 Notary Public in and for

23 The State of Texas



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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 LYNNE FREEMAN,
4 AN INDIVIDUAL
5 PLAINTIFF,

6 VS.

7 TRACY DEEBS-ELKENANEY
8 P/K/A TRACY WOLFF, AN
9 INDIVIDUAL, EMILY SYLVAN
10 KIM, AN INDIVIDUAL,
11 PROSPECT AGENCY, LLC, A
12 NEW JERSEY LIMITED
13 LIABILITY COMPANY,
14 ENTANGLED PUBLISHING,
15 LLC, A DELAWARE LIMITED
16 LIABILITY COMPANY,
17 HOLTZBRINCK PUBLISHERS,
18 LLC D/B/A MACMILLAN,
19 A NEW YORK LIMITED
20 LIABILITY COMPANY, AND
21 UNIVERSAL CITY STUDIOS,
22 LLC, A DELAWARE
23 LIMITED LIABILITY COMPANY
24 DEFENDANTS.

CASE NO. 1:22-CV-02435-LLS

15 REPORTER'S CERTIFICATION
16 DEPOSITION OF TRACY WOLFF
17 March 07, 2023

18 I, Gabriela S. Silva, Certified Shorthand
19 Reporter in and for the State of Texas, hereby certify
20 to the following:

21 That the witness, TRACY WOLFF, was duly sworn by
22 the officer and that the transcript of the oral
23 deposition is a true record of the testimony given by
24 the witness;

25 I further certify that pursuant to FRCP Rule
30(f)(1) that the signature of the deponent:

__X__ was requested by the deponent or a party before
the completion of the deposition and that the signature
is to be before any notary public and returned within
30 days from date of receipt of the transcript. If
returned, the attached Changes and Signature Page
contains any changes and the reasons therefor;

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1 _____ was not requested by the deponent or a party
2 before the completion of the deposition.

3 I further certify that I am neither counsel for,
4 related to, nor employed by any of the parties or
5 attorney in the action in which this proceeding was
6 taken, and further that I am not financially or
7 otherwise interested in the outcome of the action.

8
9
10 Certified to by me this 13th day of
11 March, 2023.



12 Gabriela S. Silva, Texas CSR(8706), RPR
13 Expiration Date: 01-31-25
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16 San Diego , CA 92101
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